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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,362	12/31/2003	Michelle Lynn Hatcher		1891

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Michelle Lynn Hatcher
2116 Wesley Ct.
Tallahassee, FL 32303

EXAMINER

RODRIGUEZ, RUTH C

ART UNIT PAPER NUMBER

3677

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/749,362	HATCHER, MICHELLE LYNN	
	Examiner	Art Unit	
	Ruth C. Rodriguez	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 10, 11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) 5-9, 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10, 11 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species I in the reply filed on 04 November 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 5-9, 12 and 13 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 04 November 2005.

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show means for securing the attachment to the tracheotomy tube or other neck wearing device, means for stringing decorative ornaments, means for connecting the securing device to the attachment, means for holding attachment together at the ends and means for connecting the closed-ended fastener in a single embodiment as claimed. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to

avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 1-4, 10, 11 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

4. Claim 1 recites that the device attachment comprises means for securing the attachment to the tracheotomy tube or other neck wearing device, means for stringing decorative ornaments, means for connecting the securing device to the attachment, means for holding attachment together at the ends and means for connecting the closed-ended fastener. However, the elected species as disclosed and shown in Figures 1 and 2 comprises of means for securing the attachment to the tracheotomy tube or other neck wearing device, means for stringing decorative ornaments and means for connecting the securing device to the attachment. Therefore, it is unclear how the selected species can also have means for holding attachment together at the ends that is used with the embodiment shown in Figure 3 and means for connecting the closed-ended fastener that is used with the embodiment shown in Figure 4. Correction is required. For purposes of examination, the means for holding attachment together at the ends and means for connecting the closed-ended fastener will not be considered for this Office Action.

5. Claim 10 recites that the neck wearing attachment comprises a closed-ended fastener, a stringing line, a split ring, a crimp bead and a jump ring. However, the elected species as disclosed and shown in Figures 1 and 2 comprises a closed-ended fastener, a stringing line and a split ring. Therefore, it is unclear how the selected species can also have a crimp bead that is used with the embodiment shown in Figure 3 and a jump ring that is used with the embodiment shown in Figure 4. Correction is required. For purposes of examination, the crimp bead and the jump ring will not be considered for this Office Action.

6. Claim 14 recites that the neck wearing device attachment comprises a closed-ended fastener, a stringing line, a split ring, beads, a crimp bead and a jump ring. However, the elected species as disclosed and shown in Figures 1 and 2 comprises a closed-ended fastener, a stringing line and a split ring. Therefore, it is unclear how the selected species can also have a crimp bead that is used with the embodiment shown in Figure 3 and a jump ring that is used with the embodiment shown in Figure 4. Correction is required. For purposes of examination, the crimp bead and the jump ring will not be considered for this Office Action.

Claim Objections

7. The claims are objected to because the lines are crowded too closely together, making reading difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

8. Claims 11 and 14 are objected to because of the following informalities:

- Claim 11 recites the limitation "the ornamental body" in the third line.

There is insufficient antecedent basis for this limitation in the claim.

- Claim 12, line 6, "a beads" should be replaced with --beads--.
- Claim 12 recites the limitation "the ornamental body" in the sixth line.

There is insufficient antecedent basis for this limitation in the claim.

Correction is required.

Note that in dealing with claims, current practice in referring to line numbers is that line numbers refer to the number of the line of the claim and not the number of the line on the page *

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-4, 10, 11 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Gaskill (US 2003/0106336 A1).

A designer tracheotomy tube and other neck wearing device attachment comprises means for securing the attachment (10) to the tracheotomy tube or other neck wearing device (2), means for stringing decorative ornaments (Paragraph 0021) and means for connecting the securing device to the attachment (smaller bead next to 2) (Figs. 1 and 2).

The means for securing the attachment to the tracheotomy tube or other neck wearing device comprises a closed-ended fastener (2) (Figs. 1 and 2).

The means for stringing decorative ornament comprises a stringing line (Paragraph 0021) (Figs. 1 and 2)..

The means for connecting the securing device to the attachment comprises a split ring (smaller bead next to 2) (Figs. 1 and 2).

A designer tracheotomy tube and other neck wearing device attachment comprises a closed-ended fastener (2), a stringing line (Paragraph 0021) and a split ring (smaller bead next to 2). The closed ended fastener secures the attachment to the tracheotomy tube or other neck wearing device (Figs. 1 and 2). The stringing line secure decorative ornaments (Figs. 1 and 2). The split ring connects the securing device to the attachment (Figs. 1 and 2).

The device attachment further comprises beads that provide the ornamental body of the attachment even though the body of the attachment may be fabricated of beads, decorative metal or any other suitable material connected to the closed ended-fastener (Paragraph 0021) (Figs. 1 and 2).

A designer tracheotomy tube and other neck wearing device attachment comprises a closed-ended fastener (2), a stringing line (Paragraph 0021), beads (Paragraph 0021) and a split ring (smaller bead next to 2). The closed ended fastener secures the attachment to the tracheotomy tube or other neck wearing device (Figs. 1 and 2). The stringing line secure decorative ornaments (Figs. 1 and 2). The beads provide the decorative ornaments of the attachment even though the body of the attachment may be fabricated of beads. The split ring connects the securing device to the attachment (Figs. 1 and 2).

Manner of Response to the Office Action

35 U.S.C § 1.33 discloses that a shortened statutory period for response to an Office Action is set to expire three months from the date of the Office Action. Failure to respond within the period for response will cause the application to become abandoned. Therefore, Applicant must respond to *all* grounds of objection and rejection within three months. That response must include a response to *each* objection and rejection.

A proper response to an Office Action should include:

Instructions to cancel or amend the rejected claims or to substitute, or to add claims to be considered by this Office (see the Manner of Making Amendments below for instructions on how to amend an application);

Acknowledgement of objections to the drawing and/or specification by:

Specific instructions to correct these defects, or

Requesting that these objections be held in abeyance until allowable subject is indicated.

Applicant should further submit an argument under the heading "Remarks" in which the applicant points out where the applicant disagrees with the examiner's contentions and wherein the applicant also discusses the references applied against the claims, explaining how the claims avoid these references or how they distinguish from them in a patentable sense.

Note that while an application can be amended to make it clearly understandable, no subject matter can be added that was not disclosed in the application as originally filed.

37 CFR § 1.121 Manner of Making Amendments

Amendments to the Specification

Amendments to the specification are made, including the abstract, must be made by presenting a replacement paragraph or section or abstract marked up to show changes made to the immediate prior version. An accompanying clean version is not required to show and should not be presented. Newly added paragraphs or sections, including a new abstract (instead of a replacement abstract), must not be underlined. A replacement or new abstract must be submitted on a separate sheet, 37 CFR 1.72. If a substitute specification is submitted to incorporate extensive amendments, both a clean version (which will be entered) and a markup version must be submitted as per 37 CFR 1.125.

The changes in any replacement paragraph or section, or substitute specifications must be shown by underlining (for added matter) or strikethrough (for deleted matter) with 2 exceptions (1) for deletion of five characters or fewer double brackets may be used (e.g. [[eroor]]; and (2) if strikethrough cannot be easily perceived (e.g. deletion of the number "4" or certain punctuation marks), double brackets must be used (e.g. [[4]]). As an alternative to double brackets, however, extra portions of text

may be included before and after being deleted, all in strikethrough, followed by including and underlining the extra text with the desired change.

Amendments to the Claims

Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of “canceled” or “not entered” may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a

status of “currently amended,” and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of “currently amended,” or “withdrawn” if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as “withdrawn—currently amended.”

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, *i.e.*, without any markings in the presentation of text. The presentation of a clean version of any claim having the status of “original,” “withdrawn” or “previously presented” will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of “withdrawn” or “previously presented.” Any claim added by amendment must be indicated with the status of “new” and presented in clean version, *i.e.*, without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of “canceled” or “not entered.”

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number.

Amendments to the Drawings

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with CFR 14.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment, and may be accompanied by a marked-up copy of one or more of the figures being amended, with annotations. Any replacement drawings sheet must be identified in the to margin as "Replacement Sheet" and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. Any marked-up (annotated) copy showing changes must be labeled "Annotated Marked-up Drawings" and accompany the replacement sheet in the amendment (e.g. as an appendix). The figure or figure number of the amended drawing(s) must not be labeled as "amended". If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Extension of Time Practice

37 CFR § 1.136(a) permits an applicant to file a petition for extension of time and a fee as in 37 CFR § 1.17(a), (b), (c), or (d) up to three months after the end of the time period set to take action except (1) where prohibited by statute, (2) in interference proceedings, or (3) where applicant has been notified otherwise in an Office Action. The petition and fee must be filed within the extended time period for response requested in the petition and can be filed prior to or with the response. The filing of the petition and fee will extend the time period to take action up to three months dependent on the amount of the fee paid except in those circumstances noted above. 37 CFR § 1.136(a) will effectively reduce the amount of paperwork required by the applicants and the Office since the extension will be effective upon filing of the petition and payment of the appropriate fee and without acknowledgement or action by the Office and since the petition and fee can be filed with the response.

The statute at 35 U.S.C. § 41(a)(8) requires the filing of a petition to extend the time and the appropriate fee. Such a petition need not be in any required format. A proper petition may be a mere sentence such as

The applicant herewith petitions the Commissioner of Patents and Trademarks to extend the time for response to the Office Action dated ___ for ___ month(s); to cover the cost of the extension, please charge my deposit account number ___ in the amount of

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____. Any deficiency or overpayment should be charged or credited to the above numbered deposit account.

The charges set forth for small entity time extensions are as follows:

Extension for response within first month	-	\$ 60.00
Extension for response within second month	-	\$225.00
Extension for response within third month	-	\$510.00

Certificate of Mailing Practice

It is called to applicant's attention that if a communication is mailed before the response time has expired applicant may submit the response with a "Certificate of Mailing" in accordance with 37 CFR § 1.8(a) which merely asserts that the response is being mailed on a given date. So mailed, before the period for response has lapsed, the response is considered timely. The following is a suggested format for the certificate of mailing under 37 CFR § 1.8(c) that should be included with all correspondence.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, Virginia, 22313-1450, on ____
Name of applicant, assignee, or Registered Representative
Signature _____
Date _____

37 CFR § 1.8 and the suggested form for patent cases established a practice before the Patent and Trademark Office which is referred to as the "Certificate of Mailing Procedure." Under this procedure, a person may state on certain papers directed to the Office (exceptions are stated in 37 CFR § 1.8), the date on which the paper will be deposited in the United States Postal Service. If the date of deposit is within the period for response, the response in most instances will be considered to be timely. This is true even if the paper does not actually reach the Office until after the end of the period for response. The Certificate of Mailing procedure does not apply to papers mailed in a foreign country.

It should be noted, however, that the Office will continue its normal practice of stamping the date of receipt (Mail Room Stamp) on all papers received through the mails except those filed under 37 CFR §1.10. The date stamped will also be the date which is entered on Office records and from which any subsequent periods are calculated. For example, 37 CFR § 1.192 gives appellant 2 months from the date of the appeal to file an appeal brief. For example, if the last day to respond to a final rejection was November 10, 1976, and applicant deposited a Notice of Appeal with fee in the U.S. Mail on November 10, 1976 and so certified, that appeal is timely even if it was not received in the Patent and Trademark Office until November 17, 1976. Since the date of receipt will be used to calculate the time at which the brief is due, the brief was due on January 17, 1977. This is 2 months after the Mail Room date.

It would be of great assistance to the Office if all incoming papers pertaining to a filed application carried the following items:

Serial number (checked for accuracy).

Group art unit number (copied from filing receipt or most recent Office Action).

Filing date.

Name of the examiner who prepared the most recent Office action.

Title of invention.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cayton (US 5,669,242), Mangano (US 5,722,260) and Gaskill (US 2003/0106336 A1) are cited to show state of the art with respect to neck wearing device attachments that have some of the features being claimed by the current application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned

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is (571) 273-8300. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase the patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as PTO's mailroom processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee that the applicant is paying by check **should not be** submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to
the Patent and Trademark Office (Fax No. (571) 273-8300) on (Date) .

(Typed or printed name of person signing this certificate)

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up

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copy of the response has been transmitted by facsimile will cause further unnecessary delays in the processing of your application, duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez
Patent Examiner
Art Unit 3677

rcr
January 21, 2006


ROBERT J. SANDY
PRIMARY EXAMINER